SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

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OCTOBER TERM, [redacted] 1970

No. 213 [redacted]

ACTION REALTY CO., CHARLES LASKO, JOSEPH D. BERKE, BERNARD FRIEDMAN, TIME READ ESTATE, BEST REALTY, A. WEINBERG REALTY, INC. d/b/a BEST REALTY, AL WEINBERG, DUKE WEINBERG, JOHN KARRAS, SUREWAY INVESTMENT CORP., WILLIAM F. SMITH, W. F. SMITH & CO., M. E. STEIN & CO., HOWARD SAMOTNY, IRWIN SPECTOR, GERALD H. CRANE, SAFEWAY REALTY COMPANY, MAX D. DRESHER, EMANUEL GOLDMAN, SIDNEY B. GOLDMAN, BENJAMIN R. HARRIS, GERTRUDE R. HARRIS, HARRY M. ORLOVE, ETHEL ORLOVE, CHARLES G. REIMANN, LORRAINE REIMANN, ROSALIND STEIN, JEROME YAVITZ, LESTER YAVITZ, AUSTIN BOND & MORTGAGE CO., WELLS MANAGEMENT CO., LOOP MORTGAGE CO., GIFFORD INVESTMENT CO., JOSEPH MILLER, ALL-SCOT REALTY, GEORGE WALDMAN, LEE INVESTMENT COMPANY, HERBERT LISS, MAX EDWARD STEIN, HOWARD SAMOTNY & ASSOCIATES, ROBERT GOLDBERG, WILLIAM V. BARNETT, WILLIAM GLASSBERG, MELVIN B. EHRLICH, BEN KATZ, WILLIAM H. SEIDE, and WEST CERMAK REALTY,

Petitioners,

vs.

CHARLES and CHARLENE BAKER, ARGLEE and ALEAN SIMS, GRANVEL and LUCILLE FREEMAN, DORIS FREEMAN, JAMES and RUTH WELLS, WILLIAM and MAGGIE GRIFFIN, LUCY ANN [illegible]GS WILSON, NAOMI SMALLWOOD JACKSON, BLANCHE [illegible]ELLER, OZIREA ARBERTHA, CLAUDE and EDNA EARL HUGHES, MILUS and BEATRICE MC GEE, LYN TOY MC GEE JACKSON, EMANUEL and ELIZABETH ROSS, JOHN and QUANITA ANDERSON, JOELLA WILLIAMS, MAY B. LANG, WILLIE NELSON, JOSEPHINE LUKE NELSON, ROBERT and RUBY LEE YORK, JEREMIAH and IRENE JORDAN, WALTER and FAY CLAY, V. H. and ALMA HOGUE, JOHN and LULA ISABELL, HOWELL and CENELLA COLLINS, CLYDE and LILLIE ROSS, WILLIAM and EFFIE HOLLAND, ANNIE P. HUMPHREY, DORIS L. BOSS, HAROLD and JIMMIE HARRINGTON, ETHEL STEVENSON, HAROLD and TOMMIE ROBINSON, JOHN and MATTIE LEWIS, MAGGIE DAVIS, O. Z. and DOROTHY BROOKS, FREDERICK and LORETTA FLEMING, GENIE and HANNAH HUTCHINGS, CURTIS GREEN and DONALD and VEOLA TURNER, on their own behalf and on behalf of all others similarly situated,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

HOWARD D. GALPER,
GEORGE S. FEIWELL,
JAMES S. GORDON,
33 North LaSalle Street,
Chicago, Illinois 60602,
Counsel for Petitioners.

FEIWELL, GALPER & GORDON,
33 North LaSalle Street,
Chicago, Illinois 60602,
Of Counsel.

IN THE

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OCTOBER TERM, 1969.

No. .....

ACTION REALTY CO., CHARLES LASKO, JOSEPH D. BERKE, BERNARD FRIEDMAN, TIME REAL ESTATE, BEST REALTY, A. WEINBERG REALTY, INC. d/b/a BEST REALTY, AL WEINBERG, DUKE WEINBERG, JOHN KARRAS, SUREWAY INVESTMENT CORP., WILLIAM F. SMITH, W. F. SMITH & CO., M. E. STEIN & CO., HOWARD SAMOTNY, IRWIN SPECTOR, GERALD H. CRANE, SAFEWAY REALTY COMPANY, MAX D. DRESHER, EMANUEL GOLDMAN, SIDNEY B. GOLDMAN, BENJAMIN R. HARRIS, GERTRUDE R. HARRIS, HARRY M. ORLOVE, ETHEL ORLOVE, CHARLES G. REIMANN, LORRAINE REIMANN, ROSALIND STEIN, JEROME YAVITZ, LESTER YAVITZ, AUSTIN BOND & MORTGAGE CO., WELLS MANAGEMENT CO., LOOP MORTGAGE CO., GIFFORD INVESTMENT CO., JOSEPH MILLER, ALL-SCOT REALTY, GEORGE WALDMAN, LEE INVESTMENT COMPANY, HERBERT LISS, MAX EDWARD STEIN, HOWARD SAMOTNY & ASSOCIATES, ROBERT GOLDBERG, WILLIAM V. BARNETT, WILLIAM GLASSBERG, MELVIN B. EHRLICH, BEN KATZ, WILLIAM H. SEIDE, and WEST CERMAK REALTY,

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Action Realty Co., et al. petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit entered on January 6, 1970.

OPINIONS BELOW.

The District Court filed a written opinion in this cause which was then known as Contract Buyers League, et al. v. F & F Investment, et al., reported at 300 F. Supp. 210 and reprinted in full as Appendix A to this petition. The opinion of the Seventh Circuit is reported at 420 F. 2d 1191, and reprinted in full as Appendix B to this petition. A three-judge court, convened pursuant to 28 U. S. C. § 2281, rendered an unreported opinion on another aspect of this litigation, which is reprinted in full as Appendix C to the Petition for Writ of Certiorari filed in the related case known as Universal Builders, Inc., et al., petitioners v. Sidney and Julia Clark, et al., respondents, which Appendices are adopted and incorporated herein.

THIS COURT'S JURISDICTION.

The judgment of the Seventh Circuit was entered on January 6, 1970. With one judge dissenting, petitioners' petition for rehearing was denied by order entered on March 5, 1970. This Court's jurisdiction is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

This petition presents the same question presented in the petition of Universal Builders, et al., in the case known as Universal Builders, Inc., et al., petitioners, v. Sidney and Julia Clark, et al., respondents, which petition is hereby adopted in full, and in addition this petition presents the following question: Whether the Seventh Circuit correctly held that an antitrust action for allegedly fixing the price and terms of a long-term contract to purchase real property does not accrue when the contract is signed, but only when it is fully performed—30 years later in some instances. The former and the latter questions are identical. The principles applicable to a determination of the time of accrual of a cause of action on a contract to pay a "discriminatory price" must perforce be the same as the principles applicable to a determination of the time of accrual of a cause of action on a contract to pay a "fixed" price or a price derived from a conspiracy in restraint of trade.

STATUTES INVOLVED.

In addition to those statutes set forth by Universal Builders, Inc., et al., in its petition which is adopted by these petitioners, the following statutes are also involved:

(a) Sherman Antitrust Act, § 1, 26 Stat. 209, § 1; 15 U. S. C. § 1:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . . ."

(b) Clayton Act, § 4, 38 Stat. 731, 15 U. S. C. § 15:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any District Court of

the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorneys fee."

(c) Clayton Act, § 4B, 69 Stat. 283, 15 U. S. C. § 15b:

"Any action to enforce any cause of action under Sections 15 or 15a of this title shall be forever barred unless commenced within four years *after the cause of action accrued*. No cause of action barred under existing law on the effective date of this Section and Sections 15a and 16 of this title shall be revived by said sections." (Emphasis supplied.)

(d) Illinois Antitrust Act, L. 1965, p. 1943, § 3, as amended by P. A. 76-208, § 1, 1969 Ill. Rev. Stat. 1967, Ch. 38, Par. 60-3:

"Every person shall be deemed to have committed a violation of this Act who shall:

"1. Make any contract with, or engage in any combination or conspiracy with, any other person who is, or but for a prior agreement would be, a competitor of such person:

a. for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodity sold or bought by the parties thereto, or the fee charged or paid for any service performed or received by the parties thereto. . . ."

(e) Illinois Antitrust Laws, L. 1965, p. 1943, § 7, as amended; Ill. Rev. Stats. Ch. 38, Par. 60-7 (2):

"Any action for damages under this subsection shall be forever barred unless commenced *within four years after the cause of action accrued;* provided that, whenever any action is brought by the Attorney General for a violation of this Act, the running of the foregoing statute of limitations, with respect to every private right of action for damages under the subsection which is based in whole or in part on any matter complained

of in said action by the Attorney General, shall be suspended during the pendency thereof and for one year thereafter. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act." (Emphasis supplied.)

STATEMENT OF THE CASE.

The facts in the case known as Baker v. F & F Investment Co., which are relevant to this Petition for Certiorari from the Seventh Circuit's decision on the issue of the statute of limitations, are nearly identical with the facts relevant to the petition filed by Universal Builders, Inc. et al., which petition is adopted herewith, with three minor exceptions. First, the properties in question sold to respondents by petitioners herein were in all instances used residential buildings, none of which were built by petitioners. Second, the very great majority of the buildings in question are not single family homes, but rather are multi-unit buildings containing two or more flats, from which income may be derived. Third, petitioners, as contract sellers, and in some instances, as the assignees of contract sellers of the real property in question, have been in business and have made sales to respondents under installment contracts for deed since the year 1956, and in most instances since prior to 1952. While most of the contracts which are the subject of this litigation were entered into during the decade 1950-1960, a substantial number were consummated during the period 1960-1965.

There is also a distinction between the installment contracts for warranty deed entered into between petitioners and respondents herein and the installment contracts entered into between petitioners Universal Builders, Inc., et al. and respondents in that litigation. The installment contracts which are the subject of this litigation provide

in a substantial number, and perhaps a majority, of cases that the contract buyer may obtain legal title when fifty percent of the purchase price has been paid.

ADOPTION OF PETITION FOR WRIT OF CERTIORARI FILED BY UNIVERSAL BUILDERS, INC., ET AL.

In all other respects petitioners herein adopt for their petition for writ of certiorari the contents of the petition filed by Universal Builders, Inc., et al., in the cause known as *Sidney Clark, et al. v. Universal Builders, Inc., et al.*, Nos. 17750 and 17751 in the Seventh Circuit. This cause, *Charles Baker, et al. v. F & F Investment, et al.*, Cause Nos. 17815 and 17816 in the Seventh Circuit, was consolidated for hearing and decision, with *Clark v. Universal Builders, Inc.*; counsel for appellants in both cases worked continuously in close cooperation, and no purpose would be served in filing separate petitions for writ of certiorari for review of the same decision below.

Respectfully submitted,

HOWARD D. GALPER,
GEORGE S. FEIWELL,
JAMES S. GORDON,
33 North LaSalle Street,
Chicago, Illinois 60602,
Counsel for Petitioners.

FEIWELL, GALPER & GORDON,
33 North LaSalle Street,
Chicago, Illinois 60602,
Of Counsel.